**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**FIRST APPEAL NO.2366 OF 2007**

Smt. Uttambai Madhukar Ujjainkar
& Ors. ..Appellants.
Vs.
Shri Balaram Vithal Mali and Anr. ..Respondents.

Mr.M.S.Karnik with Ms.P.P.Tendulkar with Sachin Gite, advs. for the Appellants.

Mr.Dinesh Gupte, adv. for the Respondent No.2 absent.

**CORAM : J.H.BHATIA, J.**
**DATE : OCTOBER 26, 2007.**

P.C.:

1. Heard the learned counsel for the Appellants. Perused the judgment and some of the documents shown at the time of arguments.

2. The appellants are original claimants and the legal heirs of the deceased Madhukar, who had died in motor accident dated 15th March, 1996. At the relevant time, he was driving a tempo bearing no.MWT-8735 and while taking the vehicle on one side of the road, it was dashed by a truck bearing no.MWT-8401 belonging to the respondent no.1 insured with the respondent no.2. The learned tribunal found that the deceased had also contributed to the accident by his negligence to some extent and in the result, liability was apportioned 80% for the truck driver and 20% to the deceased himself.

The learned Tribunal came to conclusion that the deceased was a paid employee on the said tempo and he was earning Rs.2500/- per month but in due course, salary could have also increased. Taking into consideration the number of dependants including his wife and children, the learned trial Court assessed the loss of dependency at the rate of Rs.2,500/- per month or Rs.30,000/- per year. Taking into consideration his age about 40 years, the Tribunal applied multiplier 12 and the loss of dependancy was assessed at Rs.3,60,000/-. Further an amount of Rs.20,000/- was added for the loss of consortium. After deduction of 20% towards his own contribution in the accident, the respondents were directed to pay compensation of Rs.3,04,000/- including the amount of compensation paid on the principle of no fault liability.

3. The learned counsel tried to contend that according to the petitioners/claimants, the deceased had taken four tempos on hire and was carrying on transport business. He was also doing business of plastics and the petitioners had also produced insurance certificate of 1986 to show that the deceased was owner of one tempo. The petitioner no.1, who is widow of the deceased, deposed that income of her husband was Rs.5,000/- from the business. The learned trial Court noted that the petitioner had admitted in

her evidence that her husband was paid employee as driver of the tempo at the relevant time. The learned trial Court also noted that no documentary or other evidence was produced to show that he was carrying on business of transportation or that he had any income more than Rs.2,500/- per month. The learned counsel for the appellants showed me insurance policy of one tempo for the year 1985-86 to show that vehicle was registered in the name of deceased. It is possible that in the year 1985-86, he was owner of some vehicle but the accident took place in the year 1996. The learned tribunal rightly noted that there is no documentary evidence to show that the deceased was carrying on business or was owner of any vehicle during the year 1996. Therefore, I find no fault in the findings of the trial Court that in view of the admission of the petitioner no.1, it must be held that he was paid employee. Taking into consideration his age, I find multiplier of 12 is quite reasonable. No other point is raised at the time of admission.

4. Taking into consideration the circumstances and the evidence discussed by the learned Tribunal, I find no substance in the appeal.

5. Appeal stands dismissed summarily.

**[J.H.BHATIA, J.]**